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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JUAN MAGANA-COLIN,

 Defendant-Petitioner,

v.

UNITED STATES OF AMERICA,

 Respondent.

CASE NO. 07-CV-0769 W
05-CR-1499 W

ORDER DENYING
PETITION FOR WRIT OF
HABEAS CORPUS

On April 20, 2007, Petitioner Juan Magana-Colin ("Petitioner"), a federal prisoner proceeding *pro se*, commenced this Section 2255 habeas corpus proceedings. Respondent United States of America ("Respondent") opposes. The Court decides the matter on the papers submitted and without oral argument. See Civil Local Rule 7.1 (d.1). For the reasons stated below, the Court **DENIES** the petition.

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1 **I. BACKGROUND**

2 On August 4, 2005, Petitioner was arrested approximately five miles from the
3 Port of Entry at Tecate, California after attempting to enter the United States without
4 the consent of the United States Attorney General or his designated successor. On
5 August 31, 2005, Respondent filed a one-count indictment charging Petitioner with
6 violation of 8 U.S.C. §1326, Deported Alien Found in the United States. (Doc. No.
7 5.)

8 On November 30, 2005, Respondent filed a superseding information charging
9 Petitioner with two counts of violating 8 U.S.C. §1325, Illegal Entry. (Doc. No. 15.)
10 That same day, Petitioner pled guilty to both counts pursuant to a signed written plea
11 agreement. (Doc. No. 20.) Petitioner was sentenced to 24 months in custody on each
12 count to run consecutively, and one year of supervised release on each count to run
13 concurrently. (Doc. No. 18.) On April 22, 2007, Petitioner commenced this Section
14 2255 habeas corpus proceeding.

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16 **II. DISCUSSION**

17 Petitioner raises two issues in this proceeding. First, Petitioner argues that this
18 Court's imposition of supervised release under 18 U.S.C. § 3583 was unconstitutional.
19 Second, Petitioner challenges the Court's authority to revoke his supervised release.¹
20 Respondent contends that Petitioner's habeas request is procedurally flawed. For the
21 following reasons, the Court agrees.

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¹Petitioner's challenge to the Court's authority to revoke his supervised release appears to have
25 been filed in the wrong case. There are no proceedings in this case to revoke Petitioner's supervised
release, which is not even set to begin until 2009.

26 A petition to revoke Petitioner's supervised release, however, was filed in another criminal case.
27 On March 14, 2006, Judge Gordon Thompson, Jr., granted a Petition for Warrant or Summons for
Offender Under Supervision in case 03 CR 0856. (See Doc. No. 11.) If Petitioner intended to
28 challenge those revocation proceedings, he must file a 28 U.S.C. § 2255 petition in that case. See
Rules Governing Section 2255 Proceedings, Rule 3(b).

1 A. PETITIONER WAIVED THE RIGHT TO APPEAL OR COLLATERALLY
2 ATTACK HIS CONVICTION AND SENTENCE

3 First, Petitioner waived his right to collaterally attack his sentence in the plea
4 agreement. Courts have repeatedly upheld the validity of appeal waivers finding that
5 “public policy strongly supports plea agreements.” United States v. Navarro-Botello,
6 912 F.2d 318, 321 (9th Cir. 1990); see also Brady v. United States, 397 U.S. 742, 752
7 n. 10 (1970); United States v. Wiggins, 905 F.2d 51, 53 (4th Cir. 1990). Courts will
8 enforce a Petitioner’s appeal waiver if (1) the waiver is knowingly and voluntarily made;
9 and (2) the waiver, by its terms, waives the right to appeal. United States v. Nunez,
10 223 F.3d 956, 958 (9th Cir. 2000).

11 First, a valid waiver requires that the Petitioner agreed to its terms knowingly and
12 voluntarily. See id. A reviewing court looks to the circumstances that surround the
13 plea agreement’s signing and entry to determine whether a defendant agreed to its
14 terms knowingly and voluntarily. See United States v. Baramdyka, 95 F.3d 840, 843
15 (9th Cir. 2000).

16 In the present case, Petitioner entered into the plea agreement with his attorney’s
17 advice and consent. (Doc. No. 20 at 1:19–22.) Petitioner represented that his plea was
18 knowing and voluntary. (Id. at 5:1–12.) Petitioner also represented that he was
19 satisfied with his attorney’s performance. (Id. at 10:10–12.) Furthermore, the
20 disposition hearing transcript confirms that Petitioner’s plea was knowing and
21 voluntary. (See Doc. No. 25, Ex. D.) Thus, the Court concludes that Petitioner
22 knowingly and voluntarily agreed to waive his right to appeal or collaterally attack his
23 sentence.

24 Second, a valid waiver must also explicitly state that Petitioner is waiving his
25 right to appeal. See Nunez, 223 F.3d at 958. A reviewing court applies contract
26 principles, including the parole evidence rule. See United States v. Ajugwo, 82 F.3d
27 925, 928 (9th Cir. 1996). Under the parole evidence rule, a court enforces the
28 contract’s plain language and does not look to “extrinsic evidence. . . to interpret. . . the

1 terms of an unambiguous written instrument.” Wilson v. Arlington Co. v. Prudential
2 Ins. Co. Of Am., 912 F.2d 366, 370 (9th Cir. 1990).

3 Here, the plea agreement explicitly states:

4 In exchange for the Government’s concessions in this plea agreement,
5 defendant waives, to the full extent of the law, any right to appeal or to
6 collaterally attack the conviction and sentence, including any restitution
7 order, unless the court imposes a custodial sentence greater than the high
8 end of the guideline range (or statutory maximum) recommended by the
9 Government pursuant to this plea agreement at the time of sentencing.
10 If the custodial sentence is greater than the high end of that range (or
11 statutory maximum), defendant may appeal, but the Government will be
12 free to support on appeal the sentence actually imposed. If the defendant
13 believes the Government’s recommendation is not in accord with this plea
14 agreement, defendant will object at the time of sentencing; otherwise the
15 objection will be deemed waived

16 (Doc. No. 20 at 9:3–11.) Thus, Petitioner agreed to waive collateral attack so long as
17 the Court did not impose a sentence longer than that for the high end of the offense
18 level recommended by the Government, which in this case would have been a 24-
19 month sentence per count. (Id., at 5:22–23.) Because Petitioner’s sentence did not
20 exceed the high end of the recommended offense level, the terms of his plea agreement
21 bar this collateral attack. The Court is therefore prevented from granting the habeas
22 relief requested herein.

23 **B. PETITIONER’S HABEAS REQUEST IS UNTIMELY**

24 Even if the terms of Petitioner’s plea agreement did not bar his petition, the
25 Court concludes that it is time-barred. The AEDPA provides that a Section 2255
26 habeas petition must be filed within one year from the date the conviction becomes
27 final. 28 U.S.C. § 2255 (1). In the present case, Petitioner’s conviction became final
28 shortly after November 30, 2005. (Doc. No. 18.) Thus, the one-year limitations period
expired on November 30, 2006, nearly five months before Petitioner commenced this
habeas proceeding. Even allowing for the ten days Petitioner had to file a notice of

1 appeal under Federal Rule of Appellate Procedure 4(b)(1)(A) and the time between his
2 delivery of the petition to prison officials and its filing, the limitations period had run
3 well before Petitioner filed this petition.


4 Petitioner does not contend that he is entitled to equitable tolling, nor does he
5 present any facts which could support such a claim.² As such, Petitioner's habeas
6 request is barred by AEDPA's one-year limitations period.

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8 **III. CONCLUSION AND ORDER**

9 In light of the foregoing, the Court **DENIES** Petitioner's petition for writ of
10 habeas corpus (Doc. No. 22). The Clerk of the Court shall close the district court file.

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12 **IT IS SO ORDERED.**

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14 **DATE: September 25, 2007**


HON. THOMAS J. WHELAN
United States District Court
Southern District of California

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18 **CC: ALL PARTIES AND COUNSEL OF RECORD**
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27 ²The federal habeas limitations period is equitably tolled only where "extraordinary
28 Prunty, 187 F.3d 1104, 1107 (9th Cir. 1999). This doctrine applies only when "external forces, rather
than a petitioner's lack of diligence, account for the failure to file a timely claim." Id.